IN THE HIGH COURT OF PUNJAB AND HARYANA, CHANDIGARH

F.A.O. No. 814 of 1991
Date of Decision: 9.8.2006

Mrs. Neera and another ..Appellants

Versus

Sardar Balwant Singh and others ..Respondents

CORAM:- **Hon'ble Mr. Justice H.S.Bhalla**

Present:- Mr. J.S.Bedi, Advocate
for the appellants.

Mr. Inderjeet Sharma, Advocate
for Mr. Pradeep Bedi, Advocate
for Insurance Company.

H.S.BHALLA, J.

By this common judgment, I shall be disposing of two appeals, being F.A.O. Nos. 814 and 815 of 1991 filed by the appellant-claimants for enhancement of compensation together as they arise out of the same impugned award dated 29.4.1991 passed by Motor Accident Claims Tribunal, Sonepat (hereinafter referred to as the "Tribunal"). However, for the sake of convenience, facts are being extracted from F.A.O. No. 814 of 1991.

It is unnecessary to burden my award with the facts of the case, inasmuch as, these have been, in detail, recapitulated by the learned Tribunal. However, the facts required to be noticed for the disposal of this appeal are that on 4.10.1988 Gopal Krishan, Rajinder Kumar Luthra (since both deceased) and Satish Kumar son of Sham Lal had left Jalandhar for Delhi at about 4.00 P.M. in Maruti Car bearing registration No.DDB 6737. The car was being driven by Satish Kumar upto Panipat and thereafter, at Panipat, the steering was taken by Gopal Krishan (since deceased). Satish Kumar took the seat by the side of Gopal Krishan, whereas Rajinder Kumar

Luthra sat just on the back of Gopal Krishan towards right hand side. On 5.10.1988 at about 1.30 P.M. when the said car, which was being driven by Gopal Krishan at a normal speed on his own left hand side of the G.T.Road and was a little ahead of village Bari towards Delhi, then a truck bearing registration No.DIL 5292 being driven by respondent No.1, came at a rash and negligent speed and in a zig zag manner from Delhi side and the driver thereof turned the truck towards the side of the Maruti Car and hit the right hand side front portion of the truck against the right hand side front portion of the Maruti Car, as a consequence of which, Maruti Car was pushed towards the kacha berm of the road resulting in fatal injuries to Rajinder Kumar Luthra and Gopal Krishan aforesaid, who had died at the spot and also caused injuries to Satish Kumar. The driver of the truck had stopped the truck at a distance of about 50 yards from the place of accident and thereafter, he sped away from the spot. It has been averred in the petition that accident took place due to rash and negligent driving of the respondent driver, who was driving the said truck under the instructions of respondent No.2 and the truck in question stood insured on the date and time of accident with New India Insurance Company Ltd., respondent No.3, and as such, all the respondents are liable to pay compensation. The matter was reported by Satish Kumar to Police Station Gannaur and F.I.R No. 243 dated 5.10.1988 in this regard was registered. The two bodies of Gopal Krishan and Rajinder Kumar Luthra were taken into police custody for conducting post mortem examination. The legal heirs of the deceased prayed for compensation to be awarded to them.

The stand taken by the New India Assurance Company-respondent No.3 in the written statement filed by them is that they deny the age, relationship of the partnership with the deceased, their family income in both the claim petitions for want of knowledge, although it has been

admitted that Sardar Gurdial Singh, respondent No.2, was the owner of the truck in question on the date and time of the alleged accident and that it stood insured with the New India Assurance Company at that time. It has also been pleaded in the written statement that the liability of the Insurance Company to pay compensation has been denied because respondent No.1 was not having a valid driving license at the time of alleged accident and that the accident did not take place due to rash and negligent driving of the truck in question by respondent driver and rather it took place purely due to rash and negligent driving on the part of the driver of the Maruti Car itself.

The learned tribunal, after framing of issues and appreciating the ocular as well as documentary evidence produced by the parties on the record of the case, has awarded compensation to the respective claimants in the claim petitions. For the facility of reference, it is essential to reproduce the operative part of the award dated 29.4.1991 passed by the tribunal, which is as follows:-

> In result, I accept both the claim petitions with costs (Rs.300/- is assessed as pleader's fee in each case) and allow the compensation in each claim petition as mentioned below:-
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> In Claim Petition No. 17/1989 Smt. Neera etc. Rs.2,40,000/- (Rs.two lacs forty thousand) plus interest @ 12 per cent annum from the date of petition, i.e., 27.2.1989 till actual realization, to be paid by the New India Assurance Company respondent No.3 alone. Out of the total compensation, if realized, a sum of Rs.15,000/- Rs. fifteen thousand) besides interest shall be paid to each of the petitioners namely Mela Ram and Sumitra Devi parents of the deceased and the remaining amount of compensation besides interest shall be paid to Smt. Neera and

Ritish minor son petitioner in equal shares. The share of the minor shall be deposited in FDR in some nationalized bank at Sonepat.

In Claim Petition No. 18 of 1989 Mrs. Suman Lata etc. Rs. 2,40,000/- (Rs. Two lacs forty thousand) plus interest at the rate of 12 per cent per annum from the date of petition i.e. 27.2.1989 till actual realisation, to be paid by the New India Assurance Company respondent No.3 alone. Out of the total compensation, if realised, a sum of Rs.15,000/- (Rs. Fifteen thousand) besides interest shall be paid to each of the petitioners namely Vas Dev and Smt. Kanta parents of the deceased and the remaining amount of compensation besides interest shall be paid to Smt. Suman Lata and Richu minor daughter petitioners in equal shares. The share of the minor shall be deposited in FDR in some nationalised bank at Sonepat."

This amount of compensation includes Rs.15,000/- in each case, if already paid by respondent No.3 in terms of Section 92-A of the Motor Vehicles Act, Memo of costs be prepared and file be consigned to the record room after due compliance of necessary formalities."

I have heard the learned counsel for the parties and have also gone through the record of the case.

In order to prove their case, Neera, widow of Rajinder Kumar Luthra stepped into the witness box and deposed that Mela Ram and Sumitra Devi are the parents of Rajinder Kumar Luthra. She has given the age of the deceased on the date of death to be 32 years old and her own age as 32 years and of Ritish, minor son, as 11 years, who was born on 23.1.1979, age of Mela Ram as 75 years and that of Sumitra Devi as 70

years on the date of 8.5.1990, when she made statement before the trial Court . She has deposed that the family of the deceased is known for longevity of life. She has further deposed that Rajinder Kumar Luthra was a partner in the jewellary shop at Jalandhar being run under the name and style of Fancy Jewellary, Jalandhar and he used to pay Rs.5,000/- per month to them to run the kitchen and also other household expenditure for maintenance of himself and the maintenance of the appellants. She has further deposed that her husband was enjoying good health. All the petitioners are legal representatives of Rajinder Kumar Luthra, as they were dependent upon him. Smt. Suman Lata, widow of Gopal Krishan, stepped into the witness box as PW-2 and deposed that Richu is the minor daughter of deceased Gopal Krishan. The other two petitioners are the parents of the deceased. All the petitioners were dependent upon him. She has deposed that Gopal Krishan was about 32 years old on the date of his death. She has given her age as 27 years and that of Richu as six years, of Vasdev as 60 years and of Kanta Rani as 56/57 years on the date of her examination on 8.5.1990. She has deposed that the family of the deceased is known for longevity of life and that her husband was enjoying good health. She has further deposed that her husband and Rajinder Kumar Luthra were running the business of jewellary in partnership in Jalandhar under the name and style of M/s Fancy Jewellers, Jalandhar and that her husband used to pay Rs.5,000/- per month to her to run the kitchen and meet other household expenditure. Satish Kumar (PW-3) is an eye witness to the occurrence, who was travelling in the same car at the time of accident. He has proved copy of FIR, Ex. P-3, which was recorded by the police on his statement in Police Station Gannaur. On the other hand, the Insurance Company has tendered in evidence Ex. R-1, copy of the Insurance Policy. Since the Insurance Company failed to examine the driver respondent despite repeated

opportunity, therefore, the evidence of the Insurance Company was closed vide order dated 19.4.1991. From the testimony of these witnesses, it is proved beyond doubt that all the petitioners in both the cases are legal heirs of deceased Rajinder Kumar Luthra and Gopal Krishan and that they all were dependent upon them.

Now coming to the part of income of both the deceased, it has been established on the record that the statements of the two ladies, namely, Neera and Suman Lata, widows of deceased Rajinder Kumar Luthra and Gopal Krishan have not been challenged in their cross-examination by the Insurance Company. Moreover, there is no evidence on record to the contrary to show that the family of each of the deceased is not known for longevity. Had Rajinder Kumar Luthra and Gopal Krishan not died in an unfortunate accident, they would have lived upto the age of 70 years each, which is also a normal span of life of the citizen of this country. The learned tribunal, keeping in view the age of the deceased and also taking into consideration the law laid down in **Seema Chawla and others Vs. Mohinder Singh and others**, 1988 ACJ 281 Punjab and Haryana) and **Jyotsna Dev S. State of Assam**, 1987, AcJ 172 (Supreme Court), a multiplier of 20 was applied for awarding compensation to the claimants.

Although, it has come in the testimony of Smt. Neera and Smt. Suman Lata Pws that they do not know what was the monthly income of the deceased from the jewellary business, which was being run by them in partnership, yet they have placed on record copy of the order of Assessing Officer of the Income Tax Department Ex. PY dated 31.1.1991 deciding the income tax case of the said firm M/s Fancy Jewellers, Jalandhar for the assessment year 1989-90 (accounting year 1988-89), return of which was filed on 27.11.1989, i.e., after about one year of the death of the two deceased. Learned Tribunal has discussed the income part of the deceased

in para 28 of its award, wherein he has observed that the jewellary business was started by Rajinder Kumar Luthra and Gopal Krishan (since deceased) in partnership by both the deceased only on 6.5.1988 and they died in the accident on 5.10.1988, i.e., five months after entering into the partnership of the said business. In such like circumstances, return filed on 27.11.1989 to which order Ex. PY pertains, will be taken to be the income only for five months between the two deceased partners. According to copy of the order of Assessing Officer, Ex. PY, the total return income for the income tax as Rs.37,688/- meaning thereby that, the income of both deceased was approximately assessed at Rs.18,844/- each during the period of five months, i.e., about Rs.3768/- per month each. No rebuttal evidence has been produced by the Insurance Company that the income, which has been shown in the order Ex. PY is not correct.. The learned Tribunal has also held that the income of both the deceased during the period of five months was Rs.3768/- per month each from the jewellary business. Now the question arises as to how much amount was being contributed by the two deceased for their maintenance and for the maintenance of the petitioners. The learned tribunal has observed in para 32 of its award that the deceased must be drawing Rs.1500/- per month at least from the said business for their maintenance and for the maintenance of their families, i.e., the claimants. Thus, the learned tribunal made a guess work that both the deceased must be contributing Rs.1,000/- per month each to maintain the members of the family alone, whereas each of them must be spending the remaining amount of Rs.500/- for maintaining themselves and as such, monthly dependency of the appellants was assessed at Rs.1000/- per month and annual dependency in this behalf comes to Rs. 12,000/- in each case. The learned counsel appearing for the appellants has vehemently contended that the learned

tribunal has committed a grave error in taking the income of the deceased from the jewellary business as Rs.1500/-, whereas the income of Rs.3768/- at least per month has been proved from the copy of order Ex. PY passed by the Assessing Officer of the Income Tax Department, which evidence has not been rebutted by the respondents in any manner and this fact has been established by the learned tribunal in his award that the income of the deceased, which has been shown in the order Ex. PY has not been controverted by the respondents in any manner on the record of the case. I find force in the contention raised by the learned counsel appearing for the appellants that the learned tribunal has assessed the income of the deceased on a lower side, which needs to be set right.

Considering all aspects of the matter, the learned tribunal awarded, in all, a sum of Rs. 2,40,000/-as compensation, which to my mind, is not just, proper and reasonable in the circumstances of the case and it needs to be enhanced by awarding a suitable amount to the claimants.

Keeping in view all the facts and circumstances of the case, to my mind, it is a fit case for enhancement of compensation to be awarded to the claimants on account of death of Rajinder Kumar Luthra and Gopal Krishan in car wherein they were travelling along with one Satish Kumar, who luckily survived in this horrible accident and to my mind, a sum of Rs.2,00,000/- each in both the cases (Rs. Two lac) would meet the ends of justice, besides Rs.2,40,000/- already awarded by the learned tribunal, meaning thereby that in all, the total amount of compensation work out to Rs.4,40,000/- in both the cases together with interest at the rate of Rs.6% per annum on the enhanced amount of compensation from the date of presentation of the appeals before this Court. It is made clear that the amount already paid/received by the claimants in both the appeals shall

stand adjusted towards the enhanced amount of compensation. The enhanced amount of compensation shall be paid by respondent No.3, i.e., the New India Assurance Company Limited to the claimants in both the appeals along with interest at the rate mentioned above.

With the above directions and observations, both these appeals, being F.A.O. Nos. 814 and 815 of 1991 filed by the appellants-claimants are allowed in the manner indicated above by modifying the award passed by the learned Tribunal.

(H.S.BHALLA)
JUDGE

9.8.2006
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